IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 19TH DECEMBER 2006 / 28TH AGRAHAYANA 1928

CRL.A.No. 2453 of 2006()

AGAINST THE ORDER IN ST.441/2005 of JUDL. MAGISTRATE OF FIRST CLASS-III, KOCHI

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APPELLANT: COMPLAINANT

K.H.MOHAMMED FAISAL,
58/1007, ROSHAN NALE, BANERJI ROAD,
KOCHI-18.

BY ADV. SRI.S.RAJEEV

RESPONDENTS: ACCUSED & STATE

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1. JOSE JACOB, S/O. SEBASTIAN,
DOWNSTAIRS OF MANJOORAN TUITION CENTRE,
V.K.KARUNAKARAN SMARAKA LANE,
KALOOR, KOCHI.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY ADV. SRI.S.NIRMAL KUMAR -R1
PUBLIC PROSECUTOR SRI. C.M. NAZAR -R2

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 19/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 2453 OF 2006

Dated this the 19th day of December, 2006

JUDGMENT

This appeal is filed against the order in S.T. No. 441 of 2005 on the file of the Judicial First Class Magistrate's Court III, Kochi by which the accused - first respondent herein was acquitted on the ground that the complainant was absent on the day on which the case was posted.

2. This Court heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the first respondent.

3. The case of the appellant is that the cheque issued by the first respondent in his favour towards discharge of a debt when presented to the bank for encashment was dishonoured for want of sufficient funds in the account of the first respondent. After completing the statutory requirements, the appellant filed the complaint. The trial court took cognizance of the complaint and issued summons to the first respondent. Thereafter the case was posted for hearing on 20.4.2006. Since the

appellant was absent on that day, the trial court acquitted the first respondent under Section 256(1) Cr.P.C.

4. Learned counsel appearing for the appellant submits that the appellant could not appear before the court below on the date of posting of the case as he was held up in a traffic block and could not contact his counsel and not because of any wilful negligence. A reading of the impugned order would show that the learned Magistrate had not considered the principle laid down by this Court in the decisions reported in **Don Bosco v. Partech Computers Ltd., 2005(2) K.L.T. 1003** and **G.F.S. Chit & Loans (P) Ltd. v. Rajesh, 2006(3) K.L.T. 825** . In the above two judgments, this Court had categorically held that the trial Magistrate should consider the requirement or necessity of the presence of the complainant on the date of posting of the case before passing an order under Section 256(1) Cr.P.C. In the above circumstances, this Court is of the view that the impugned order is illegal and liable to be set aside.

5. Accordingly, the order under challenge is set aside and the trial court is directed to take the case on file and dispose of the same afresh, in accordance with law. The parties shall appear before the court below on 20.1.2007.

The Crl. Appeal is allowed by way of remand.

(K.THANKAPPAN, JUDGE)

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